APPENDIX I.

COURT OF APPEALS OF KENTUCKY

RENDERED MARCH 6, 1959

RALPH RICHARDSON, - - - - - - *Appellant.*

v.

C. C. BRUNNER, - - - - - - - - *Appellee.*

Appeal from the Jefferson Circuit Court,
Chancery Branch, First Division,
Honorable Macauley L. Smith, Judge.

OPINION OF THE COURT BY JUDGE BIRD—AFFIRMING; REHEARING DENIED OCTOBER 16, 1959.

This action involves the title to real property.

On October 22, 1956, a default judgment was entered against Ralph Richardson in favor of C. C. Brunner.

On November 23, 1956, Richardson filed a motion to vacate the default judgment under CR 55.02 and 60.02(1-3-6). Various affidavits were filed in support of the motion and against it. The motion was heard and overruled by order on December 3, 1956. On December 28, 1956 Richardson filed a notice of appeal by which he appealed from the order of December 3, 1956, refusing to vacate the default judgment.

On March 11, 1957, Richardson filed another motion under CR 55.02 and 60.02(1-3-6) to vacate the default judgment of October 22, 1956, and the order of December 3, 1956, overruling his first motion to vacate under CR 55.02 and 60.02(1-3-6). This second motion of March 11, 1957, to vacate was overruled on March 15, 1957, and on the same

day he filed his notice of appeal from the ruling on the second order denying relief under CR 55.02 and 60.02(1-3-6).

On March 22, 1957, Richardson filed a third motion to vacate under CR 55.02 and 60.02(6) which sought to vacate all previous judgments and orders refusing relief under CR 55.02 and 60.02. This order was overruled on March 22, 1957, the day it was filed. Notice of appeal from that order was filed on the same day.

Richardson has appealed from each of the three orders denying him relief under CR 55.02 and 60.02(1-3-6).

We shall discuss the appeals in the same order in which they were taken. The rules relied upon read as follows:

55.02

"For good cause shown the court may set aside a judgment by default in accordance with Rule 60.02."

60.02

"On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59.02; (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason of an extraordinary nature justifying relief from the operation of the judgment. * * *"

[1-3] Let us consider the first motion to vacate under CR 60.02. For the purpose of this discussion we shall as-

sume that the defendant, Richardson, had a valid defense. While highly questionable we shall likewise assume that he properly defined that defense in his motion. This does not of itself entitle the defendant to the relief sought. He must explain why he did not present that defense upon the trial and thus excuse his default. Dant v. Progress Pain Mfg. Co., Ky., 309 S. W. 2d 187.

Let us consider his reasons for not defending:

(1) He says that Brunner's counsel so misrepresented certain facts to him that "he had given up all hope of saving his property" to which Brunner held a tax deed. There were some negotiations between Richardson and Brunner's counsel but the record shows that these negotiations occurred almost a year before the suit was filed. The record also discloses an affidavit by Brunner's counsel in which it is specifically sworn as follows: "There were no misrepresentations made to the said Ralph Richardson, he was merely told what Mr. Brunner would take to reconvey the property to said Richardson." If representations made long before the filing of the action may be considered within the purview of CR 60.02, the court nevertheless had sufficient evidence upon which to determine the issue against Richardson and find that there was no misrepresentation or misconduct on the part of Brunner or his counsel. We would therefore not disturb the determination of the trial court.

(2) He says that he couldn't defend the action because of his inability to pay an attorney to represent him. However, the record shows that he did procure an attorney shortly after the default judgment was taken. He does not undertake to say that he did not have the same resources before the default judgment as after. In fact, the record discloses that he owned property other than that involved in this action. The record also shows that, during the year in which this action was originally filed he was collecting

rent. The record shows that he had from May until late October to make arrangements for counsel. There is sufficient evidence in the record upon which the court might determine that Richardson was able to employ counsel, and there is nothing in this motion to show that he tried to employ counsel.

(3) Finally he gives his ignorance and illiteracy as an excuse for not defending the action. He may be uneducated but the record, words to the contrary notwithstanding, shows Richardson to be a rather intelligent person. The record discloses that he knew enough to seek advice of counsel on matters about which he was uninformed. He did that before the action but there is nothing in his motion or affidavit to show that he sought advice after the action was filed.

Any action under CR 60.02 addresses itself to the sound discretion of the court and the exercise of that discretion will not be disturbed on appeal except for abuse. Fortney v. Mahan, Ky., 302 S. W. 2d 842. The record fully authorizes the trial court's finding and conclusion. It is therefore the opinion of this Court that there has been no abuse of discretion and that the judgment of the trial court on the first motion should be affirmed.

In the second and third motions Richardson makes the bare assertion that he is moving under CR 60.02 and states not a single fact upon which he may base his right to use the rule for relief. Facts are stated which may have been quite pertinent to a defense of the original action but none are asserted either in the motion or by supporting affidavit to show why he was prevented from asserting those facts in the original action. In other words there is nothing in either of the motions which tends to explain the default. In Dant v. Progress Paint Mfg. Co., Ky., 309 S. W. 2d 187 we explicitly held that, under those conditions, the moving

party is presumed to have no explanation. The showings made in the second and third motions are wholly insufficient and the trial court was correct in denying the relief sought.

For the reasons stated each of the three orders of the trial court are affirmed.

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APPENDIX II.

COURT OF APPEALS OF KENTUCKY

OCTOBER 23, 1959

RALPH RICHARDSON, - - - - - - *Appellant,*

v.

C. C. BRUNNER, - - - - - - - *Appellee.*

Appeal from the Jefferson Circuit Court,
Honorable Macauley L. Smith, Judge.

OPINION OF THE COURT BY JUDGE STEWART—AFFIRMING.

The appeal now before us grows out of a fourth attempt by motion to vacate a default judgment, pursuant to CR 55.02 and CR 60.02(4), on the ground that it was void ab initio. This appeal was taken from the order overruling the motion. The judgment was rendered on October 22, 1956, against appellant, Ralph Richardson, in favor of appellee, C. C. Brunner, in the Jefferson Circuit Court. It vested Brunner with fee simple title to certain real estate in Louisville which Richardson claimed he owned.

The other three motions which sought the same relief on the same ground were overruled and, on an appeal to this Court from the order entered, were all dealt with in an opinion styled Richardson v. Brunner, Ky., 327 S. W. 2d 572. The facts are fully set forth in the opinion and

we shall not repeat them. We there held that the three motions were properly overruled.

Although the above opinion does not specifically state that the judgment rendered in the original action was a valid one, such a determination in this respect may be plainly inferred from the refusal of this Court to uphold any of appellant's contentions on the former appeal, with the result that the judgment was left undisturbed. However, in order to dispel any doubt that may now exist on this point, we unequivocally hold the judgment must stand as entered in the lower court.

The instant motion undertakes to relitigate, as did the other three motions, the same issue between the same parties as regards the same subject matter, namely, that the judgment is a nullity so that Richardson still owns the property, but it is our view this issue has been finally and conclusively adjudicated. In other words, the doctrine of res judicata applies and bars any further litigation of this issue.

Wherefore, the judgment is affirmed.

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APPENDIX III.

COURT OF APPEALS OF KENTUCKY

FEBRUARY 2, 1962

RALPH RICHARDSON, - - - - - - *Appellant,*

v.

C. C. BRUNNER, ET AL., - - - - - *Appellees,*

and

RALPH RICHARDSON, - - - - - - *Appellant,*

v.

C. C. BRUNNER, - - - - - - - *Appellee.*

Consolidated Appeals from Jefferson Circuit Court, Chancery Branch, First Division, Hon. Macauley L. Smith, Judge.

OPINION OF THE COURT BY COMMISSIONER CULLEN—AFFIRMING.

These consolidated appeals are from judgments in two separate cases. One appeal is from a judgment overruling a motion by appellant Richardson under CR 60.02 to set aside a previous judgment in an action in which appellee Brunner was plaintiff and Richardson was defendant, involving a tax title to a tract of real estate in Louisville. The other appeal is from a judgment dismissing an action brought by Richardson against Brunner, involving another tract of real estate for which Brunner held a tax deed. For convenience we shall designate the appeals as Case No. 1 and Case No. 2.

CASE No. 1

On October 22, 1956, in an action brought by Brunner against Richardson, a default judgment was entered against Richardson, adjudging that Brunner had valid title to a certain tract of land in Louisville by virtue of a deed issued under KRS 91.540 upon a sale of the land for city taxes owed by Richardson. Four successive motions by Richardson under CR 55.02 and 60.02, to set aside that judgment, were overruled by orders of the circuit court and those orders were affirmed by this Court. See Richardson v. Brunner, Ky., 327 S. W. 2d 572; Richardson v. Brunner, Ky., 328 S. W. 2d 154. The instant appeal is from a judgment overruling a fifth motion by Richardson under CR 60.02.

The ground of the fifth motion was that KRS 91.540, under which the tax deed was executed to Brunner, is unconstitutional, for which reason, it is claimed, the judgment is *void*. This ground is without merit because it is the rule in Kentucky, and the virtually unanimous rule of other jurisdictions, that a judgment based upon or rendered under an unconstitutional statute is not void. Commonwealth v. Jefferson County, 300 Ky. 514, 189 S. W. 2d 604; 30 Am. Jur., Judgments, sec. 19, p. 172. So Richardson's motion under CR 60.02 could not put in issue the question of the constitutionality of the statute.

The judgment overruling the motion was proper.

We deem it appropriate to make the comment that there may be some ultimate limit in law upon the number of motions that may be filed to set aside a judgment under CR 60.02.

CASE No. 2

The second case concerns a different tract of land from that involved in Case No. 1. In 1958 Brunner received a

city tax deed for this tract, under KRS 91.540, following a sale of the tract for delinquent 1956 taxes owed by Richardson. Action was brought by Richardson against Brunner and others, seeking a declaration that KRS 91.540 is unconstitutional and an adjudication that Richardson had title to the tract subject only to a lien in favor of Brunner for the delinquent taxes, penalties and interest. Judgment was entered dismissing the action on the ground that the complaint as amended failed to state a claim on which relief could be granted.

Richardson asserted three grounds of unconstitutionality of the statute: (1) It violates various rights of the taxpayer and various constitutional provisions because it authorizes the city tax receiver to execute a deed conveying absolute fee simple title to the purchaser at the tax sale, without affording the taxpayer a hearing *before* execution of the deed on the question of whether all of the requirements of the statutes relating to levy, sale and redemption have been complied with; (2) it would permit the tax receiver to convey a fee simple title even though he had given the taxpayer false or misleading information so as to cause the taxpayer to fail to exercise his right of redemption; (3) it authorizes the execution of a tax deed even though the purchase price at the tax sale was considerably less than the value of the land, thus amounting to a taking of property for a public purpose without paying just compensation, in violation of Sections 13 and 242 of the Kentucky Constitution.

It is significant that the pleadings do not allege any actual failure of the tax authorities to comply with the statutory requirements relating to levy, sale and redemption, in regard to Richardson's tract of land.

It is our opinion that the first ground has no merit, because the firm construction of KRS 91.540 has been that a deed executed under it is not valid unless the proceedings

for the sale of the property were in compliance with all statutory requirements. See Interstate Bond Co. v. Williams, 290 Ky. 850, 162 S. W. 2d 770; Brunner v. Bell, Ky., 290 S. W. 2d 461. Under our decisions the taxpayer is not deprived of an opportunity to question the validity of the proceedings *after* the deed is executed.

Since the deed does not foreclose all rights of the taxpayer, there is no provision or principle of the Constitution that requires he be given opportunity for a hearing *before* rather than after the deed is executed.

The cases relied upon by the appellant, such as City of Louisville v. Cochran, 82 Ky. 15, and Maguiár v. Henry, 84 Ky. 1, involved *curative* statutes which undertook to deprive the taxpayer of substantial defenses and to prevent him ever from raising certain issues concerning the validity of the tax proceedings. There is no such deprivation or prevention here.

Board of Levee Commissioners v. Johnson, 178 Ky. 287, 119 S. W. 8, also relied upon by the appellant, likewise is not applicable because it dealt only with the right of the taxpayer to be heard before the *assessment* of a tax. It is no authority for the proposition that the taxpayer must be given a hearing after sale for delinquency and before execution of the tax deed.

By way of clarification, we perhaps should point out that the statute here in question does not prevent the taxpayer from questioning *in court* the validity of the tax sale proceedings either before or after the execution of the tax deed. What Richardson complains of is that the statute does not specifically provide for a hearing before the *tax authorities* before the deed is executed. In our opinion the Constitution does not require such a provision. The statutes contain adequate provision for notice of the tax sale.

The second ground of attack upon the statute also is without merit. If the tax receiver were guilty of conduct

misleading the taxpayer in such a way as to cause him not to exercise his right of redemption the courts would provide appropriate relief. Brunner v. Bell, Ky., 290 S. W. 2d 461, relied upon by the appellant, does not suggest otherwise. In fact, in that case the tax deed was held void because of a failure of the tax authorities to comply strictly with the statutes.

The third ground of attack is based upon the premise that a sale of land for delinquent taxes constitutes a taking for a public purpose. This premise obviously is fallacious. The sale is nothing more than a step in the foreclosure of a lien imposed under the taxing power. The statutes call for a public sale, upon adequate notice, thus providing reasonable assurance of the property's bringing a fair price, and a reasonable redemption period is prescribed. If in fact a particular piece of property is sold for a grossly inadequate price perhaps the taxpayer might be entitled to some form of equitable relief, assuming he could show an adequate excuse for not having exercised his right of redemption. But the possibility that such a sale might occur is not a ground for holding the statute unconstitutional. The statute provides adequate means by which the rights of the taxpayer may be protected.

The judgments on both appeals are affirmed.

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APPENDIX IV.

CONSTITUTION OF UNITED STATES.

AMENDMENT V.

No person shall * * * be deprived of * * * property, without due process of law; nor shall private property be taken for public use without just compensation.
USCA, Constitution and Amendments, Amendment 5, page 297;

AMENDMENT XIV.

Section 1.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immuities of citizens of the United States; nor *shall any State deprive any person* of life, liberty, *or property, without due process of law;* nor deny to any person within its jurisdiction the equal protection of the law.
USCA, Constitution and Amendments, Amendment 14, Section 1, pages 3 and 4.

CONSTITUTION OF KENTUCKY.

BILL OF RIGHTS.

That the great and essential principles of liberty and free government may be recognized and established. We declare that:

Sec. 1. Inherent and inalienable rights.—All men are, by nature, free and equal, and have certain inherent and inalienable rights, among which may be reckoned: * * *

5. The right of acquiring and protecting property. * * *

Sec. 2. Absolute power does not exist in a republic.—Absolute and arbitrary power over the lives, liberty and property of free men exists nowhere in a republic, not even in th largest majority.

Sec. 11. * * * nor can he be deprived of * * * property, unless by the judgment of his peers or the law of the land; * * *

Sec. 13. Jeopardy; property not to be taken without compensation.— * * * nor shall any man's property be taken or applied to public use without the consent of his representatives, and without just compensation being previously made to him.

Sec. 14. Courts to be open and speedy trial guaranteed. —All courts shall be open and every person, for an injury done him in his land, * * * shall have remedy by due course of law, and right and justice administered without sale, denial or delay.

Sec. 26. Bill of rights to remain inviolate.—To guard against transgression of the high powers which we have delegated, we declare that everything in this Bill of Rights is excepted out of the general powers of government, and

shall forever remain inviolate; and all laws contrary thereto, or contrary to this Constitution, shall be void.

Sec. 27. Legislative, executive, and judicial departments.—The powers of the government of the Commonwealth of Kentucky shall be divided into three distinct departments, and each of them be confined to a separate body of magistracy, to-wit: Those which are legislative, to one; those which are executive, to another; and those which are judicial, to another.

Sec. 59. Limitations upon.—The general assembly shall not pass local or special acts concerning any of the following subjects, or for any of the following purposes, namely: * * *

(12) Legalizing invalid instruments. To give effect to invalid deeds, wills or other instruments. * * *

Sec. 171. Levy and collection of taxes by general laws; public purposes only; uniform within the class and territory; classification of property; bonds of state and its divisions exempt; referendum of laws classifying property; provisions for.—The general assembly shall provide by law an annual tax, which with other resources, shall be sufficient to defray the estimated expenses of the Commonwealth for each fiscal year. Taxes shall be levied and collected for public purposes only * * *

Sec. 242. Private property; taking of for public purposes; appeal; trial by jury.—Municipal and other corporations, and individuals invested with the privilege of taking private property for public use, shall make just compensation for property taken, injured or destroyed by them; which compensation shall be paid before such taking, * * *

Baldwin's Kentucky Revised Statutes, Annotated 1955 Edition—Constitution of the Commonwealth of Kentucky, pages 1, 2, 7, 10, 12, 15, 24, 76 and 103.

JUDICIARY AND JUDICIAL PROCEDURE.

28 USCA

Section 1257, Page 88, 1949 Edition.

1257. State courts; appeal; certiorari

Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:

* * * * * * * *

(3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States. June 25, 1948, c. 646, 62 Stat. 929.

RULES OF CIVIL PROCEDURE, FEDERAL.

RULE 12.

* * * * * * * *

(b) How presented. Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: * * * (6) failure to state a claim upon which relief can be granted, * * *.

(h) Waiver of Defenses. A party waives all defenses and objections which he does not present either by motion as hereinbefore provided or, if he had made no motion, in his answer or reply, except (1) that the defense of failure to state a claim upon which relief can be granted, * * *

28 USCA, Federal Rules of Civil Procedure, 1960 Edition, pages 13, 14 and 15.

RULE 55.

Default.

* * * * * * *

(c) Setting Aside Default. For good cause shown the court may set aside an entry of default and, if a judgment by default has been entered, may likewise set it aside in accordance with Rule 60 (b). * * *

28 USCA, Federal Rules of Civil Procedure, 1960 Edition, pages 288 and 289.

RULE 60.

Relief from Judgment or Order.

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(b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, etc. On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding of the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; * * * (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; * * * (6) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order, or proceeding was entered or taken. * * *

28 USCA, Federal Rules of Civil Procedure, 1960 Edition, pages 121 and 122.

RULES OF CIVIL PROCEDURE OF KENTUCKY.

RULE 1. SCOPE OF RULES. These rules govern the procedure and practice in all courts of this State, except original actions in the Court of Appeals, in all actions of a civil nature whether cognizable as cases at law or in equity, with the exception that they do not govern procedure and practice in any special statutory proceeding insofar as they are inconsistent or in conflict with the procedure and practice provided by the applicable statute. They shall be construed to secure the just, speedly, and inexpensive determination of every action.

RULE 8.01. CLAIMS FOR RELIEF. A pleading which sets forth a claim for relief, whether an original claim, counterclaim, cross-claim, or third-party claim, shall contain (1) a short and plain statement of the claim showing that the pleader is entitled to relief and (2) a demand for judgment for the relief to which he deems himself entitled. Relief in the alternative or of several different types may be demanded.

RULE 12.02. HOW PRESENTED. Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: * * * (6) failure to state a claim upon which relief can be granted, * * *.

RULE 12.08. WAIVER OF DEFENSES. A party waives all defenses and objections which he does not present either

by motion as hereinbefore provided or, if he has made no motion, in his answer or reply, except (1) that the defense of failure to state a claim upon which relief can be granted, the defense of failure to join an indispensable party, and the objection of failure to state a legal defense to a claim may also be made by a later pleading, if one is permitted, or by motion for judgment on the pleadings or at the trial on the merits, * * *.

RULE 55.02. SETTING ASIDE DEFAULT. For good cause shown the court may set aside a judgment by default in accordance with Rule 60.02.

RULE 57. DECLARATORY JUDGMENTS. The procedure for obtaining a declaratory judgment pursuant to statute shall be in accordance with these rules, and the right to trial by jury may be demanded under the circumstances and in the manner provided in Rules 38 and 39. The existence of another adequate remedy does not preclude a judgment for declaratory relief in cases where it is appropriate. The court may order a speedy hearing of an action for a declaratory judgment and may advance it on the calendar.

RULE 60.02. MISTAKE; INADVERTENCE; EXCUSABLE NEGLECT; NEWLY DISCOVERED EVIDENCE; FRAUD, etc. On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise or excusable neglect; * * * (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; * * * (6) any other reason of an extraordinary nature justifying relief from the operation of the judgment. The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order, or proceeding was entered or taken. A motion under this rule does not affect the finality of a judgment or suspend

its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to grant relief to a defendant constructively served as provided in Rule 4:10, . . .

Kentucky Rules of Civil Procedure, 1953 Edition, pages 1, 13, 19, 20, 22, 83, 89.

(h) Waiver of Defenses. A party waives all defenses and objections which he does not present either by motion as hereinbefore provided or, if he has made no motion, in his answer or reply, except (1) that the defense of failure to join an indispensable party, and

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SECTIONS OF KENTUCKY STATUTES.

91.470 (3001) Sale of personal property for city taxes.

(1) Except as provided in KRS 91.550, the tax receiver shall, immediately upon the filing of the lists of unpaid tax bills, distrain the personal property owned or in the rightful possession of the taxpayer, notwithstanding the existence of any lien, except the lien for state taxes, upon the property, and may proceed to sell the title of the taxpayer in a sufficient amount of the property to pay the tax, penalties, interest and costs. When the tax bill is against a married woman, it may also be levied upon such personal property of her husband, not exempt from levy under a like tax bill against himself, as is found on any of the lands or improvements for which the married woman is assessed.

(2) Sales of personal property under such tax bills shall be for cash.

(3) In selling personal property, the levy, advertisements, sale and delivery shall be made in the same manner

as in the sale of goods levied under execution on a replevin bond.

91.480 (3001; 3003) Sale of real property for city taxes.

(1) If no personal property is reasonably available out of which the tax bill can be collected by distraint, the tax receiver shall sell, for cash, a sufficient amount of the real property belonging to the taxpayer to pay the tax, penalties, interest and costs, subject to the provisions of KRS 91.550. The sale shall be at public auction, in the same manner that property is sold under execution, except that the sale shall be had at the door of the city hall of the city in which the land lies, and the land need not be appraised or levied on. The sale shall be advertised by posting for fifteen days before the sale a written or printed notice at the city hall door, and by publication at least four weeks prior to the day of sale by one insertion in a newspaper published in the English language in the city.

(2) The tax receiver shall, not less than fifteen days before the sale, mail to the taxpayer a postal card addressed to his residence or place of business, if it can be ascertained, notifying him of the time and place of the sale. In order to cover the cost of the advertisement and notification, the tax receiver shall collect a fee of two dollars from each person whose property is advertised, and shall pay the fee into the city treasury. In no event shall the city pay the fee.

(3) The failure of the tax receiver to send or of the taxpayer to receive the notice of sale required by sub-section (2) of this section shall not invalidate the sale or any subsequent proceedings thereunder, and no levy or attempted levy upon personal property shall be necessary to validate any sale of real property, whether for taxes or real property, personal property or both.

91.510 (3002) Redemption of real property sold at tax sale.

(1) The owner of any real property sold for city taxes, or his heirs, representatives or assigns, shall have the same right to redeem such property from the purchaser thereof as is provided by law in the case of real property sold under execution, by paying to the tax receiver the amount of the purchase price at the sale, with interest thereon at the rate of one percent per month, or fraction thereof, from the date of sale, and in case the land is not redeemed before April 1 next succeeding the sale, by paying a further penalty of five percent upon the purchase price. In the case of an adult owner redemption must be made within two years from the date of sale, and in the case of an infant owner it must be made within one year after he becomes of age. During the period allowed for redemption, or until redemption, the property shall be assessed for subsequent tax levies in the name of the delinquent taxpayer, and during that time the property shall not be sold for the collection of such later tax bill, but the delinquent taxpayer shall be required, on redeeming the property, to pay those bills, with interest and penalties, in addition to paying the purchase price, with interest and penalties, as above required.

(2) All money paid in redemption of real property sold for city taxes shall be paid to the tax receiver, who shall account for the money in the same manner and to the same officer as in the case of regular tax collections, except that when the purchaser at a tax sale is not the city the tax receiver shall pay over to the purchaser, upon proper receipt, the amount of the purchase price, with interest and penalties thereon. All money paid by the delinquent taxpayer at the time of redemption is discharge of tax bills on assessments made against the property subsequent to the tax for which the sale was had shall be accounted for by the tax receiver as other tax collections.

(3) The tax receiver shall, by postpaid letter or card, promptly notify the purchaser at a tax sale of the redemption of the land purchased by him.

91.540 (3004) Deed to purchaser at tax sale; effect as evidence.

If real property is not redeemed within the time allowed for redemption, a fee simple title shall vest absolutely in the purchaser, subject only to state taxes, and the tax receiver shall thereupon convey the property by deed to the purchaser. The purchaser shall then be entitled to possession of the property, and may recover it by action or motion. Any purchaser other than the city shall pay all city tax bills on assessments made against the property after the assessment of the tax for which it was sold, with interest as provided by KRS 91.430, and the tax receiver shall not convey the property to the purchaser until all such tax bills have been paid. The deed shall be prima facie evidence of the regularity of the sale, of all prior proceedings, and of title in the purchaser to whom the deed is executed.

91.560 (3001; 3006) Tax lien.

(1) The fee simple of all lands in the city, and the full term and renewal of every leasehold carrying with it the value of the improvements thereon, shall be subject, from *and after July 1 of each year, to a lien* for the city taxes to be assessed thereon for the succeeding year. The lien shall be superior to homestead right and to all encumbrances, whether made before or after that date, except state taxes, and shall take precedence of dower, curtesy, remainders, reversions and other future estates.

(2) From the beginning of any action to collect taxes against real property, a lien for each tax bill assessed against the same owner or set of joint owners shall also arise upon every tract of land or improvement still owned

by him or them, with a view to the sale of less than all the tracts for the entire tax bill, subject to such marshaling of burdens as against third parties as the rules of equity require. The court may allow a purchaser or encumbrancer to release any tract from the tax lien thereon, by paying its share of the tax, interest and costs.

(3) The tax lien on real property provided for by this section shall attach though, through error in the proceedings, the tax bill is unenforceable, in which case the lien reaching back to the date named shall support the claim of the city for any taxes imposed afterward for the year in question under any curative Act of the General Assembly.

(4) The city shall have a lien on personal property as provided in the case of real property for its taxes.

418.040 (C.C. 639a-1) Plaintiff may obtain declaration of rights if actual controversy exists.

In any action in a court of record of this Commonwealth having general jurisdiction wherein it is made to appear that an actual controversy exists, the plaintiff may ask for a declaration of rights, either alone or with other relief; and the court may make a binding declaration of rights, whether or not consequential relief is or could be asked.

418.045 (C.C. 639a-2) Persons who may obtain declaration rights; enumeration not exclusive.

Any person interested under a deed, will or other instrument of writing, or in a contract, written or parol; or whose rights are affected by statute, municipal ordinance, or other government regulation; or who is concerned with any title to property, office, status or relation; or who as fiduciary, or beneficiary is interested in any estate, provided always that an actual controversy exists with respect thereto, may apply for and secure a declaration of his right or duties, even through no consequential or other relief be asked. The

enumeration herein contained does not exclude other instances wherein a declaratory judgment may be prayed and granted under KRS 418.040 of this act, whether such other instance be of a similar or different character to those so enumerated.

418.050 (C.C. 639a-3) Method of obtaining declaration; advancement on docket.

Declaration of rights and determination of questions of construction, as herein provided for, may be obtained by means of proceedings at law or in equity, or by means of a petition on either the law or equity side of the court, as the nature of the case may require; and insofar as a declaration of rights is the relief asked, the case may be docketed for early hearing as in the case of a motion.

Baldwin's Kentucky Revised Statutes, 1955, Chapter 91, pages 228, 229, 230, 231; Chapter 418, pp. 17, 18 and 19.